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The situation in Central America: progress in fashioning a region of peace, freedom, democracy and development

Letter dated 27 October 2008 from the Secretary-General to the President of the General Assembly

I have the honour to address you concerning item 20 on the agenda of the sixty-third session of the General Assembly, to be discussed on 10 November 2008.

Pursuant to General Assembly resolutions 58/117 and 58/239, I made a report to the Assembly on the situation in Central America during the sixtieth session (A/60/218). While there was no further request from the Assembly that I present a new report on this agenda item, I wish to provide a brief update on one pending issue on which important progress has been made. Specifically, through this letter, I wish to update the General Assembly on the International Commission against Impunity in Guatemala, known by its Spanish acronym CICIG.

In resolution 58/239, the General Assembly took note with satisfaction of the intention of the Government of Guatemala to establish a Commission for the Investigation of Illegal Groups and Clandestine Security Apparatuses, and urged me to support that initiative with a view to its prompt implementation. In my report to the Assembly at its sixtieth session (A/60/218), I informed the Assembly that in a setback, a 2004 agreement between the Government of Guatemala and the United Nations for the establishment of the Commission for the Investigation of Illegal Groups and Clandestine Security Apparatuses had failed to achieve parliamentary ratification. I further reported that the Government had announced that it would promote a new agreement to address impunity.

In my report to the General Assembly at its sixty-second session on the work of the Organization (A/62/1), I informed the Assembly that a new agreement to this end had indeed been reached between the Government of Guatemala and the United Nations. The agreement was signed on 12 December 2006 ("Agreement between the United Nations and the State of Guatemala on the establishment of an International Commission against Impunity in Guatemala, CICIG") and ratified by the Guatemalan Congress on 1 August 2007. The Government of Guatemala notified the Organization on 4 September 2007 that internal procedures for approval and ratification had been completed. Thus, the agreement to create CICIG was registered under article 102 of the Charter and entered into force on that date. I would like to

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further inform you that, pursuant to article 5 of the agreement, I appointed Carlos Castresana of Spain as the Commissioner of CICIG, as announced on 17 September 2007. In my most recent report on the work of the Organization (A/63/1), I noted that with the establishment of CICIG, we would be involved in an innovative attempt to dismantle criminal groups whose actions threatened to erode hard-fought gains in the peace process.

The United Nations has taken on this initiative at the explicit request of the State of Guatemala. The organization has worked closely with three successive Guatemalan Governments to establish CICIG and, most recently, to ensure its effective functioning.

Under the terms of the agreement, CICIG has as its central objective to support, strengthen and assist Guatemalan State institutions responsible for investigating and prosecuting crimes allegedly committed by illegal security forces and clandestine security organizations and other criminal conduct related to these entities. This assistance to the justice sector is informed by the conviction that the impunity engendered by these groups seriously undermines fundamental human rights. Thus, through its actions, CICIG will strengthen the capacity of Guatemala to effectively fulfil its obligations under international human rights instruments to which it is a party, as well as national human rights instruments, including the Comprehensive Agreement on Human Rights of 29 March 1994, which forms an integral part of the peace accords.

To this end, the mandated functions of CICIG include determining the existence of said illegal security groups and clandestine security structures; collaborating with the State in the dismantling of such groups and structures; promoting the investigation, criminal prosecution and punishment of crimes committed by their members; and recommending to the State the adoption of public policies for eradicating such groups and structures and preventing their re-emergence. CICIG may also file criminal and/or administrative complaints with the relevant authorities against civil servants who contribute to impunity by interfering with the exercise of the functions of the Commission. CICIG has the power to provide technical advice to the relevant State institutions for investigation and criminal prosecution, file criminal complaints with the relevant authorities and join a criminal proceeding as a private prosecutor (*querellante adhesivo*) in all cases within its jurisdiction, working within the Guatemalan legal framework.

The agreement establishes CICIG as an independent, non-United Nations organ, whose expenses are to be met through voluntary contributions from the international community. For the purpose of channelling those contributions and ensuring transparency and accountability, a trust fund administered by the United Nations Development Programme was established on 3 October 2007. The Government of Guatemala, for its part, is committed to providing the Commission with office space and other in kind contributions, as well as to taking all necessary measures to ensure the security and protection of Commission staff. To date, $26 million has been raised from 12 Member States and the European Union, covering more than 90 per cent of the projected two-year budget. Other Member States have seconded security staff, criminal investigators and legal experts. CICIG operates today with a staffing level of approximately 115 international and Guatemalan national staff, assigned to both professional and administrative functions.

In the initial months, the United Nations, in coordination with the Government of Guatemala, focused its efforts on the speedy establishment and full functioning of the Commission. To that end, I circulated a memorandum to heads of all pertinent United Nations departments, offices, programmes and specialized agencies directing them to extend their full cooperation and support to CICIG, as one of the most recent additions to the Organization's special mechanisms designed to promote the rule of law.

During the first year of its two-year mandate, CICIG has made significant advances. Given the legitimacy that CICIG has constructed in Guatemala, it has received information from numerous sources, which has permitted progress in mapping the clandestine structures that are at the centre of its mandate. In addition, CICIG is currently investigating 15 high-impact cases, most often in coordination with the Office of the Public Prosecutor of Guatemala. Technical assistance and advice is provided on a permanent basis to that Office. Similar efforts to provide technical support are under way with the Ministry of the Interior and the National Civilian Police, and initial discussions have been held with the judiciary to establish a framework for collaboration.

In the exercise of its mandated powers, CICIG has also identified and provided to the competent authorities the names of those civil servants who have been derelict in their duty or have obstructed the work of CICIG, whether by action or by omission. These efforts have served the State in its attempts to identify and sanction officials who are aiding impunity. Finally, CICIG has analysed national legislation on security, criminal law and criminal procedure in the light of international best practices. It has identified legal and regulatory changes needed to better protect the rights guaranteed in the Constitution of the Republic of Guatemala, remove obstacles and fill legal gaps that interfere with the prompt administration of justice. As a result, the Commission recently submitted to the President of Guatemala a series of reform proposals for transmission as draft laws to the Congress of Guatemala.

At the same time, I note with satisfaction that the Government of Guatemala has taken important measures in recent months to strengthen the Office of the Public Prosecutor and the Ministry of the Interior and ensure close collaboration with CICIG. Given that coordination between CICIG and these State institutions is a vital and necessary element for the success of CICIG, I am grateful for this clear indication by the Government of its strong commitment to the fight against impunity.

I would also like to express my sincere thanks to the many Member States who have already provided support to CICIG through their financial contributions, by seconding expert staff and with their interest and political accompaniment of this ambitious and difficult initiative.

CICIG has many challenges ahead. The most complex of these could arise as investigations and court proceedings advance in cases that may well touch powerful criminal interests, potentially with transnational implications. Already in its first year, CICIG has identified some key operational concerns that must be addressed in order to improve the chances for its success. These include strengthening security, reinforcing the framework for staff protection and immunities, facilitating the transnational exchange of information pertinent to its cases and creating effective mechanisms for witness protection. It is my strong hope that we will all be able to

work together — CICIG, the United Nations, Guatemala and other Member States — to address these issues with alacrity and creativity.

Promotion of the rule of law is fundamental to the mission of the United Nations and the fulfilment of the obligations of our Charter. CICIG is constructing one innovative way forward. I will continue to direct all pertinent United Nations departments, offices, programmes and specialized agencies to extend their full cooperation and support to CICIG, particularly addressing the aforementioned challenges, and I would invite Member States to provide their utmost support to ensure its success.

I should like to request that the present letter be circulated as a document of the General Assembly under agenda item 20.

(*Signed*) **Ban** Ki-moon